



U.S. Department of Justice

Environment and Natural Resources Division

90-8-16-05816

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May 18, 2004

By Facsimile & First-Class Mail

Michael Mayer
Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104-1711
Fax: (206) 343-1526


Re: Notice of Intent Regarding Oregon Coast Coho (*Oncorhynchus kisutch*)

Dear Mr. Mayer:

I am writing in response to your April 2, 2004, letter setting out your intent to commence litigation against one or more federal agencies under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 *et seq.*, over recent statements or alleged actions pertaining to the Oregon Coast Coho evolutionarily significant unit ("ESU"). Your letter references recent orders of the Ninth Circuit in the *Alsea* litigation and suggests that the government is misconstruing the effect thereof, resulting in alleged violations of ESA Section 7 obligations. See *Alsea Valley Alliance v. Evans*, 358 F.3d 1181 (9th Cir. Feb. 24, 2004), dismissing appeal from remand and vacatur order, 161 F. Supp.2d 1154, 1162 (D. Or. Sep. 10, 2001). You note that a December 2001 order of the Ninth Circuit had stayed the effect of the district court order pending appeal.

This is to advise you that it is the position of the United States that the Ninth Circuit's order of February 24, 2004, will become effective when the Ninth Circuit issues a mandate to the district court, pursuant to Federal Rule of Appellate Procedure 41. Until that happens, the order's statements that the cross-appeals are dismissed and the stay pending appeal is dissolved are not effective. Thus, for the time being the district court's order remanding and vacating the listing of the Oregon Coast coho ESU remains stayed and the ESU remains listed as "threatened" under the ESA.

Sincerely,


Jean Williams
Section Chief

cc: Patti Goldman, Earthjustice
Michael Bancroft, NOAA GC
Alecia Van Atta, NOAA GC
Roger Nesbit, BLM OGC
Val Black, DOA OGC
Owen Schmidt, DOA OGC